

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

El Paso Natural Gas Company

Docket Nos. RP04-110-001  
RP04-110-002  
RP00-336-014  
RP00-336-018  
RP00-336-019  
RP00-336-020  
RP00-336-025  
RP04-251-000

ORDER ON COMPLIANCE FILING AND  
REQUESTS FOR REHEARING AND CLARIFICATION

(Issued December 22, 2004)

1. On February 20, 2004, El Paso Natural Gas Company (El Paso) filed revised tariff sheets<sup>1</sup> in compliance with the Commission's order issued February 5, 2004 in this proceeding (February 5 order),<sup>2</sup> addressing El Paso's proposed procedures for redesignating primary point rights. Timely requests for rehearing of the February 5 order were filed by Southwest Gas Corporation (Southwest Gas) and Arizona Public Service Company and Pinnacle West Energy Corporation (collectively APS/Pinnacle). In addition, on August 13, 2004, APS/Pinnacle and Salt River Project Agricultural Improvement and Power District (collectively Arizona Electrics) filed a motion for expedited clarification concerning the rate impact of redesignating primary point rights.

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<sup>1</sup> Sub 1<sup>st</sup> Revised Original Sheet No. 287A, Substitute Original Sheet No. 287B, and Substitute Second Revised Sheet No. 353 to FERC Gas Tariff, Second Revised Volume No. 1A.

<sup>2</sup> 106 FERC ¶ 61,103 (2004).

2. As discussed below, the Commission accepts the revised tariff sheets effective February 13, 2004, as proposed. The requests for rehearing and clarification are granted and denied as discussed below. This order is in the public interest because it provides firm shippers more flexibility to fully utilize their capacity by re-designating their primary receipt and delivery points.

### **I. The Compliance Filing in Docket No. RP04-110-001**

3. The February 5 order accepted El Paso's proposal for re-designating primary rights as an interim measure, subject to modifications and further order based upon the outcome of Order No. 637 proceedings.<sup>3</sup> In compliance with the February 5 order, El Paso filed revised tariff sheets that (1) remove the requirement that shippers request equal monthly Maximum Daily Quantities (MDQs), (2) permit all firm shippers to submit simultaneous re-designation requests, and (3) modify the effective date for grandfathered transactions to February 13, 2004.

4. Notice of El Paso's filing was issued on February 24, 2004. Interventions and protests were due as provided in § 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests were filed.

5. The Commission finds that El Paso has satisfactorily complied with the directives of the February 5 order and accepts the revised tariff sheets effective February 13, 2004.

### **II. Requests for Rehearing or Clarification**

#### **A. Default Protection for Releasing Shipper**

6. Southwest Gas filed a request for rehearing of the February 5 order regarding a replacement shipper's right to redesignate primary point rights as part of a capacity release transaction. Under El Paso's proposal, a replacement shipper may redesignate primary point rights as part of the capacity release transaction. The releasing shipper can preserve its own primary point rights by declining to allow the replacement shipper to redesignate primary point rights in its "Notice by Shipper Electing to Release Capacity." Southwest Gas objects to El Paso's tariff provisions because there is no default tariff

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<sup>3</sup> El Paso filed a revised Order No. 637 compliance filing in Docket No. RP04-251-000. In a contemporaneous order, the Commission is accepting El Paso's uncontested settlement in that proceeding.

protection in case the releasing shipper's capacity release notice is silent on that point. Southwest Gas asks the Commission to grant rehearing and direct El Paso to provide the same default protection that the Commission ordered in *ANR Pipeline Co. (ANR)*.<sup>4</sup>

7. In *ANR*, the Commission explained that a releasing shipper can protect itself from the potential loss of a primary point that might result if the replacement shipper changed a primary point by including a condition in its release prohibiting the replacement shipper from changing the releasing shipper's primary points. On rehearing, several parties were concerned that a releasing shipper might inadvertently fail to include such a provision in the release and thus lose its primary points. These parties asked the Commission to rule that in cases where the release is silent, the default will be that changes in primary points are not permitted. The Commission found that it would be reasonable for ANR to adopt as the default either: (1) to require releasing shippers to affirmatively grant replacement shippers the right to change points during the term of the release; or (2) to assume that the right to change points is granted unless the releasing shipper affirmatively restricts the replacement shipper's right to do so. The Commission directed ANR to include in its tariff and post prominently on its website a clear description of the rights of the parties under the approach it chose to adopt.

8. The Commission will grant Southwest Gas's request for rehearing and require El Paso to file revised tariff sheets within 30 days to reflect the default language, consistent with our ruling in *ANR*.

**B. Capacity with California Delivery Points Redesignated to East of California Delivery Points**

9. In the February 5 order, the Commission accepted El Paso's proposal to require a shipper to pay the higher rate applicable to a downstream zone when it redesignates to a primary point located in a downstream rate zone. The Commission also stated that, consistent with Commission policy, it is reasonable for El Paso to require that a shipper continue to pay its existing contract rate when it moves to an upstream rate zone unless the maximum rate for the upstream zone is higher. The Commission noted, however, that

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<sup>4</sup> *ANR Pipeline Company*, 103 FERC ¶ 61,022 (2003), *on reh'g*, 104 FERC ¶ 61,320 at P 37 (2004).

the rate zone ruling does not apply to the redesignations of Blocks I, II, and III<sup>5</sup> delivery points that El Paso previously made in response to the August 29 order in the Capacity Allocation Proceeding.<sup>6</sup>

10. APS/Pinnacle seek clarification of this ruling. APS/Pinnacle state that the Commission correctly states that Out-of-Zone charges should not be applied to the redesignations of Block capacity previously required by the August 29 order. However, out of an abundance of caution, APS/Pinnacle request clarification that El Paso has no authority to charge California rates for capacity with an East of California (EOC) delivery point, including Line 2000 and Power-Up Project capacity,<sup>7</sup> allocated to former FR shippers in the process of converting from full requirements to contract demand service. If their request for clarification is denied, APS/Pinnacle request rehearing.

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<sup>5</sup> As explained in the prior orders, the 1996 Settlement divides capacity turned back to El Paso by California local distribution companies into three Blocks: Block I capacity has alternate receipt point rights unless the capacity is sold for the maximum tariff rate and, in that event, it has primary point rights only to the Permian and Anadarko Basins, but not to the San Juan Basin. Block II capacity is a block of 614 MMcf/d of turned back capacity designated for primary point deliveries to Topock for PG&E or other shippers serving a market in PG&E's service territory (collectively Block II shippers), and has primary access to all system receipt points; the Block II shippers have recall rights. Block III has primary access to all receipt points.

<sup>6</sup> 104 FERC ¶ 61,232 (2003). In the Capacity Allocation Proceeding, the Commission required El Paso to, among other things, convert full requirements (FR) service to contract demand (CD) service. As part of that conversion, the Commission required El Paso to allocate certain existing capacity to the former FR shippers, including certain Block, Line 2000, and Power-Up Project capacity. The Block capacity allocated to the former FR shippers had California delivery points. In the August 29 order, the Commission required El Paso to allow its former FR shippers to choose non-California delivery points for the Block capacity.

<sup>7</sup> Line 2000 is a 785-mile pipeline between Erenburg, Arizona and McCamey, Texas with a capacity of 230 MMcf/d. See *El Paso Natural Gas Pipeline Co.*, 95 FERC ¶ 61,176 (2001). El Paso's Power-Up Project added compression facilities to Line 2000 to add transportation capacity of 320 MMcf/d. See *El Paso Natural Gas Pipeline Co.*, 103 FERC ¶ 61,280, *reh'g denied*, 105 FERC ¶ 61,202 (2003).

11. In addition, APS/Pinnacle and Salt River Project Agricultural Improvement and Power District (collectively Arizona Electrics) filed a motion for expedited clarification concerning the rates applicable at redesignated primary points.<sup>8</sup> In this motion, the Arizona Electrics again seek clarification that the August 29 order was intended to assign to EOC shippers capacity that would carry the rate consequences of only the delivery zone in which the EOC shippers' redesignated delivery point was located. Arizona Electrics restate the request that the Commission clarify that El Paso has no authority to charge California rates for any EOC delivery point capacity, including Line 2000 and Power-Up capacity allocated to EOC Shippers in the process of converting to CD service. Arizona Electric Power Cooperative, Inc. (AEPCO) and Southwest Gas filed answers in support of Arizona Electrics' motion and El Paso filed a response to the motion.

12. In its response to Arizona Electrics' motion, El Paso states that a former full requirements Arizona shipper that moves an allocated delivery point from California to Arizona prior to the rate case will not be charged more than the maximum just and reasonable rate for Arizona either now or after 2005. Arizona Electrics filed a response stating that this clarification is acceptable. The Commission accepts El Paso's clarification, and this resolves the issue.

### **C. Settlement Rate Cap**

13. Arizona Electrics also raise an issue regarding a rate cap provision in the 1996 Settlement.<sup>9</sup> Article 11 of the 1996 Settlement applies to "all periods subsequent to the term of this" Settlement. Section 11.2 provides

This paragraph 11.2 applies to any firm Shipper with a TSA that was in effect on December 31, 1995, and that remains in effect in its present form or amended, on January 1, 2006, but only for the period that such shipper has not terminated such TSA. El Paso agrees with respect to such shippers that, in all rate proceedings following the term of this Stipulation and Agreement:

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<sup>8</sup> The request was filed on August 13, 2004, in Docket Nos. RP04-110-002, RP00-336-014, RP00-336-018, RP00-336-019, RP00-336-20, RP00-336-025, RP04-251-000. The Arizona Electrics state that they seek clarification of an important capacity contracting issue and its related rate consequence that came to light during the July 28, 2004 technical conference in El Paso's Order No. 637 proceeding.

<sup>9</sup> The 1996 Settlement establishes the rates and terms and conditions of service on El Paso for a ten-year period ending January 1, 2006. El Paso Natural Gas Co., 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997).

(a) Base Settlement Rate Escalated. El Paso will not propose to charge a rate applicable to service under such TSA during the remainder of the term thereof that exceeds the base settlement rate established under paragraph 3.2(a) applicable to such Shipper, as adjusted pursuant to paragraph 3.2(b) [annual inflation adjustment] and 3.5 [adjustment for certain cost changes beyond El Paso's control and exceeding \$10 million] through the term of this Stipulation and Agreement, as escalated annually thereafter through the remainder of the term of such TSA using the procedure specified by paragraph 3.2(b) unless and until such TSA is terminated by the Shipper.

14. Arizona Electric's state that it is their understanding that under this provision, the 1996 Settlement Base Rates would constitute the cap on rates for the duration of the EOC Shippers' contracts, which in most instances extend beyond the 10-year rate moratorium. Therefore, they assert, the Settlement provides each customer the assurance that the Settlement rates, as adjusted for inflation, will serve as a cap on future rates beyond the 2005 rate case moratorium. Arizona Electric's argue that the conversion to CD service should not change the calculation of the rate cap.

15. Arizona Electric's state that El Paso suggested at the July technical conference in Docket Nos. RP04-248-000 and RP04-251-000 that the Settlement rates applicable to California delivery points should be used to calculate the rate cap applicable to Block, Line 2000, and Power-Up capacity. Arizona Electric's argue that the rates applicable to this capacity are dictated by the delivery zones where the capacity is utilized and that El Paso is not entitled to utilize the California delivery zone rates to calculate the cap applicable to EOC capacity.

16. Answers in support of Arizona Electric's argument were filed by AEPCO and Southwest Gas. AEPCO argues that the Block and Line 2000 capacity that was assigned to the former full requirements shippers during the conversion process was not new capacity, but was capacity that was characterized by the Commission as a replacement for the full requirements rights that the former full requirements shippers were using at the time. AEPCO states that, just as these substitute capacity rights are now treated as EOC zone entitlements, the same treatment as the capacity they replaced, these substitute rights must also be treated under the rate cap in the same manner as the capacity they replaced. Southwest Gas also supports the motion, asserting that the rate cap provision remains in effect as approved and that the Commission's orders did not modify the rate cap provision.

17. Answers in opposition to Arizona Electric's motion were filed by El Paso; the Public Utilities Commission of the State of California (CPUC); Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E); Indicated

Shippers;<sup>10</sup> and jointly by Public Service Company of New Mexico, El Paso Electric Company, the El Paso Municipal Customer Group (EPMCG),<sup>11</sup> Phelps Dodge Corporation, and Texas Gas Service Company, a Division of ONEOK Inc. (Joint EOC Parties).

18. Joint EOC Parties, the CPUC, and SoCalGas/SDG&E argue that the motion should be rejected as premature. Joint EOC Parties argue that this issue is not ripe and need not be addressed by the Commission at this time. They assert that the statements credited to El Paso regarding this issue are not before the Commission in any proceeding and that granting the motion will not create certainty for shippers. Joint EOC Parties state that shippers will not know the applicable rates until the rate case is filed and adjudicated.

19. The CPUC also opposes the motion and argues that Arizona Electrics are in fact seeking a declaratory order interpreting a provision of the 1996 Settlement that extends into the future. The CPUC asserts that the current motion is not the proper procedural vehicle to request a Commission ruling interpreting the rate cap and thus should be rejected. The CPUC states that El Paso is months away from filing its next rate case and should be given the opportunity to describe its proposal.

20. SoCalGas/SDG&E argue that if the Commission nonetheless chooses to address the issue here, it should reject the motion because there is no basis in the 1996 Settlement or in the orders in the Capacity Allocation Proceeding to conclude that the bargain reached in the 1996 Settlement includes a post-settlement rate cap for Line 2000 and Power-Up capacity that was not in existence in 1996, and for Block capacity that in 1996 was agreed to have the rate consequences for California delivery points. Similarly, the CPUC states that the TSAs in effect on December 31, 1995 did not include the Block, Line 2000, or Power-Up capacity and that it would be unreasonable to interpret the rate cap as applying to such new capacity.

21. Indicated Shippers also argue that the 1996 Settlement rate cap applies, if at all, only to the billing determinants upon which the EOC shippers' 1996 Settlement rates

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<sup>10</sup> The Indicated Shippers are Aera Energy LLC; BP America Production Company and BP Energy Company; Burlington Resources Trading Inc.; ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.; ConocoPhillips Company; Coral Energy Resources, L.P.; and Occidental Energy Marketing, Inc.

<sup>11</sup> EPMCG is composed of the following distributor-customers of El Paso: City of Mesa, Arizona; City of Benson, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Socorro, New Mexico; City of Deming, New Mexico; Town of Ignacio, Colorado; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

were paid. Indicated Shippers argue that there is no basis for extending the applicability of the rate cap to cover new contracts or newly assigned capacity. Indicated Shippers further argue that, because the full requirements contracts were abrogated and are being renegotiated, the rate cap does not apply to the new contracts.

22. El Paso urges the Commission to reject Arizona Electric's contention that the rate cap should apply to Block capacity and expansion capacity. El Paso states that the express terms of section 11.2 preclude its application to capacity that did not exist at the time the 1996 Settlement was executed and to capacity that had been sold to California shippers. El Paso explains that, to help facilitate the required conversion of full requirements contracts to contract demand contracts, it agreed to undertake two expansions, the Line 2000 and Power-Up Project, and agreed to forego full recovery of those costs until the next rate case, but not after the next rate case. El Paso asserts that, if the rate cap were applied to this capacity as requested by Arizona Electric, neither project would be economically justifiable unless the costs were recovered from other shippers who would then be subsidizing the shippers who received the capacity. El Paso states that Arizona Electric seeks to force El Paso to provide them with the expansion capacity indefinitely at a subsidized rate, in conflict with prior Commission holdings and with regulatory policies.

23. The Commission finds that a ruling on how the rate cap would apply in El Paso's next general rate case is premature at this time and beyond the scope of this proceeding. Under the terms of the 1996 Settlement, El Paso is required to file a new rate case effective January 1, 2006. As the Commission stated in the July 9, 2003 order in the Capacity Allocation case with respect to interpreting elements of the 1996 Settlement that remained after the orders converting the full requirements service to contract demand service, "El Paso's next rate case will provide the opportunity to review the justness and reasonableness of the rates and practices on El Paso's system."<sup>12</sup> The Commission will not address or prejudge any of these rate case issues.

24. However, the Commission will clarify one aspect of the prior orders in the Capacity Allocation Case and the Power-Up Project certificate proceeding with regard to the expansion capacity. As explained in those orders, El Paso agreed to provide an additional 230,000 Mcf/d of capacity to the FR shippers through its Line 2000 Project and another 320,000 Mcf/d from its Line 2000 Power Up Project. El Paso agreed to make this capacity available to the FR shippers without additional reservation charge through the end of the Settlement.<sup>13</sup> The Commission held El Paso to its commitment and stated that El Paso will forego additional revenues from these projects until its next

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<sup>12</sup> 104 FERC ¶ 61,045 at P 93 (2003).

<sup>13</sup> 99 FERC ¶ 61,996 at 62,011-12 (2002).



rate case.<sup>14</sup> However, nothing in the order in the Capacity Allocation Proceeding suggests that El Paso should be unable to recover the costs of these projects from customers in its next rate case. Moreover, the Commission addressed the issue of cost recovery for the Power-Up Project in the certificate order authorizing its construction.<sup>15</sup> The certificate order holds that absent changed circumstances, El Paso may roll-in the costs of the Power-Up Project in its next rate case. Further, it was not the Commission's intent to create any new subsidized rates, but rather to send correct price signals to the markets. Any future rulings on the issue of cost recovery for this capacity must be consistent with these decisions.

The Commission orders:

(A) El Paso's revised tariff sheets are accepted as discussed above.

(B) The requests for rehearing and clarification are granted and denied as discussed in the body of this order.

(C) El Paso is directed to refile tariff sheets within 30 days of the date of this order to include a default provision regarding the redesignation of primary points by a replacement shipper in a capacity release, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>14</sup> 104 FERC ¶ 61,045 at P 109.

<sup>15</sup> El Paso Natural Gas Co., 103 FERC ¶ 61,280 at P 41-45 (2002), *reh'g denied*, 105 FERC ¶ 61,202 at P 14 (2003).